IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRITS No. 4209 of 2004

RAI SAHAB
V/S
NORANG RAM & ANR.

Mr. RAKESH ARORA, for the appellant / petitioner

Date of Order : 7.10.2004

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the petitioner. By the impugned order, the trial court has directed the petitioner to pay the deficit stamp duty along with penalty, obviously so as to render it to be admissible in evidence.

It is contended by learned counsel for the petitioner firstly that, may be that document may not be sufficiently stamped, yet there is no law which prohibits the admissibility of document in evidence, simply because it is insufficiently stamped and, therefore, impugned order could not be passed. Suffice it to say that the argument is based on the ignorance of Sec.35 of the Stamp Act, which enacts the bar against admissibility of such insufficiently stamped document.

Next contention is that, by the document, the title in the property has not been conveyed, therefore, it does not fall within the meaning of “Conveyance”, as defined by Sec.2(10) of the Act. Suffice it to say that a look at provision of Art. 23 of the Second Schedule shows, that in this article an amendment has been introduced, and thereby description of instrument has been provided, according to which, an agreement to sell an immovable property or an irrevocable power of

attorney shall, in case of transfer of the possession of such property before, at the time of or after the execution of such agreement or power of attorney, be deemed to be a conveyance and the stamp duty thereon shall be chargeable accordingly.

In the present case, a look at copy of agreement, produced as Annex.1, clearly shows that thereby possession of property was acknowledged to have been transferred.

In that view of the matter, I do not find any sufficient ground to interfere with the impugned order. The writ petition is, therefore, dismissed summarily.

(N P GUPTA),J.

/Srawat/